

GMC response to Law Commission consultation on intimate image abuse - May 2021

Question 1

Were you aware of the GOC strategy and protocol on tackling illegal practice? [Yes - colleagues in our Registrations and Revalidation were aware. However, other teams we spoke to across the organisation were not aware.]

Question 2

Were you aware that the Opticians Act 1989 creates the areas of illegal optical practice set out above? [No]

Question 3

Which of the above areas of illegal optical practice do you think pose the highest likelihood of risk of harm and most severe risk of harm to the public and why?

As we don't have expertise in optical practice we don't feel able to provide a detailed answer to this question. However, based on the material provided, there doesn't appear to be an indication that the likelihood of risk of harm or severity of harm to the public has significantly changed since your previous research was conducted.

We also thought it might be helpful to explain our approach to assessing the overall risk to public protection posed by a doctor when considering fitness to practise concerns as similar decision making principles apply when considering the risk posed by a registrant who has engaged in illegal practice.

We only take action in relation to serious or persistent breaches of our professional standards that pose a risk to patient safety, public confidence in doctors and / or maintaining proper professional standards. This may be where actual harm has occurred to patients, but potential harm to patients is equally relevant.

Although we consider each case on its individual facts, there are certain categories of case where an allegation of impaired fitness to practise, if proven, would amount to such a serious failure to meet the standards required of doctors, that there will be a presumption of impaired fitness to practise. These categories of cases are detailed at paragraph 24 of our guidance Making decisions on cases at the end of the investigation stage: Guidance for the Investigation Committee and case examiners. Of relevance to the areas of illegal practice set out in the Opticians Act are dishonesty, knowingly practising without a licence and gross negligence or recklessness about a risk of serious harm to patients.

To assess the level of risk posed by a doctor in an individual case we consider the circumstances giving rise to the concern, including mitigating and aggravating

factors. The Sanctions Guidance sets out a number of factors relevant to considering the seriousness of a doctor's behaviour, including whether the doctor showed a lack of responsibility towards patient care and whether they showed a deliberate or reckless disregard for restrictions/requirements.

Attempts by doctors to circumvent the qualification and/or regulatory system, obtain employment as a practitioner when not eligible to do so and/or knowingly committing a regulatory breach, have all been viewed particularly seriously by tribunals and often led to the most serious outcomes. This is because such conduct is considered to undermine the proper operation of a system designed to protect the public and can impact on patient safety and public confidence in both the profession and the regulation of the profession.

Question 4

How, if at all, do you expect these risks to change in the next five years?

In recent years the healthcare environment has seen an increase in online prescribing and during the pandemic, the use of remote consultations and online services has increased further. These types of practice are likely to increase the possibility of healthcare practitioners operating across borders.

We note one of the aims in your [Strategic Plan 2020-25](#) is to reform business regulation and consider this is something that could contribute to mitigating some of the risks relating to online prescribing services. However, cross-border regulation remains a challenging area and carries new and emerging risks relating to regulators' ability to take appropriate and necessary regulatory action when individuals situated outside the UK are providing services to patients in the UK. This is something you may want to consider in your future strategy.

Question 5

How do you think the GOC could improve its strategy on tackling illegal optical practice and what impact do you think this will have?

Thank you for clarifying this question refers to your protocol on tackling illegal optical practice.

Although we don't feel able to comment on the specific strategic aims for illegal practice that you've set out in the protocol, we've made some suggestions below that you may wish to consider in order to increase the accessibility and transparency of the information included in the protocol.

- It may be helpful to stakeholders to be more explicit about where the protocol fits in with your 2020-2025 strategic plan.
- As detailed in our [Corporate Strategy](#) there are a number of themes that we, and other partners, are currently reflecting in our work, that may be relevant to your approach to tackling illegal practice, such as:

- Collaboration with other regulators to deliver shared goals.
- Making evidence-based decisions
- Shaping our processes based on the experiences of those that interact with us, their needs and expectations.
- It may be useful to provide clarification around the use of the term 'prosecution' as the document says you have no statutory prosecution powers.
- The document lists two ways that you can respond to illegal practice. It may be helpful to provide further information about when one option would be used over the other.

Question 6

What would help you feel more informed about the GOC's strategy, and action taken, on tackling illegal practice? [Please tick as appropriate]

e-bulletin

regular statistics on our website

tweets

other [please specify]: Are there cross-regulator meetings or other forums at which relevant information could be shared?